IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO 1182 of 2004
with
CIVIL APPLICATION NO 4452 of 204
in
SPECIAL CIVIL APPLICATION NO 17907 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M/S MOTILON SYNTHETICS

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. LETTERS PATENT APPEAL No. 1182 of 2004

MR TUSHAR MEHTA for Appellant No.

MS LILU K BHAYA for Respondent No. 1

..... for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 19/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. This is the second round of litigation by way of LPA before this Court against the order dated 21.4.2004, passed by the learned Single Judge of this Court (Coram : Ms.Justice R.M.Doshit, J.) in Special Civil Application No.7907 of 2003 and Civil Application No.2089 of 2004, whereby the learned Single Judge of this Court, after hearing the learned Advocates for the parties extensively, dismissed the petition as well as Civil Application on merits. It may be stated that this very order dated 21.4.2004, passed by the learned Single Judge in Special Civil Application and the Civil Application was earlier challenged before the Division Bench of this Court by the Appellant by way of LPA No.1128 of 2004, which was disposed of, as withdrawn, by the Division Bench of this Court (Coram : R.K.Abichandani & D.H.Waghela,JJ.) on 5.5.2004. It is a brief order which we would like to reproduced, which is as under :

> "The learned Counsel for the appellant states, on instructions from the appellant, that the appellant seeks permission to withdraw the appeal at this stage with a view to approach the learned single Judge in the matter for treating the petition under Article 226 of the Constitution and making an order thereunder or for clarifying whether the jurisdiction has been exercised under Article 226 of the Constitution by the learned Single Judge in making the impugned order, so that the question of maintainability of L.P.A. can become clear. We permit the appeal to be withdrawn for the said purpose reserving all the rights and contentions of the appellant. The appeal stands disposed of as withdrawn at this stage."

2. It appears that after withdrawal of the Ist LPA No.1128 of 2004 the appellant approached the learned Single Judge by way of MCA No. 901 of 2004 in Special Civil Application No.17907 of 2003 seeking clarification from the learned Single Judge about the exercise of Her Lordships powers under Article 226 and 227 of the Constitution. After hearing the learned Counsel Shri Tushar Mehta for the Applicant Her Lordships admitted the said MCA by issuing the Rule on it on 7.5.2004. However, interim relief prayed for in the Application was specifically refused.

3. Under the circumstances, once again, by way of present Appeal, the appellant has challenged the order dated 21.4.2004 passed by the learned Single Judge of this Court in Special Civil Application No.17907 of 2003 and Civil Application No.2089 of 2004. This Appeal was initially moved before the learned Vacation Judge on 12.5.2004 and the learned Vacation Judge (Coram : K.S. Jhaveri, J.) passed an order on this LPA and the Civil Application No.4452 of 2004, filed in Appeal and granted interim relief in terms of Para : 10(d) of Civil Application while adjourning the main Appeal on 15.6.2004 without issuing formal order of notice against the respondent Board. Be that as it may.

4. The matter was thereafter adjourned from time to time. In between there was some proposal made by the learned Counsel Shri Tushar Mehta for the Appellant to Ms.Bhaya, learned Counsel for the respondent Board, appearing in response to the order of interim relief granted by this Court in Civil Application, but the same could not be materialised. Therefore, today the matter was heard extensively on the point of maintainability of the Appeal.

5. Learned Counsel Shri Mehta submitted that on earlier occasion i.e. on 5.5.2004 he had withdrawn his first LPA No.1128 of 2004 from another Division Bench of this Court (Coram : R.K.Abichandani & D.H.Waghela, JJ.), therefore, the present Appeal would be maintainable. We have already reproduced the order passed by the Division Bench of this Court on 5.5.2004 in earlier LPA No.1128/04. It is clear from the order passed by the Division Bench of this Court that while granting the permission to withdraw the said Appeal no liberty was reserved to file another Appeal against the order dated 21.4.2004 passed by the learned Single Judge of this Court (Coram : Ms.R.M.Doshit,J.) in Special Civil Application No.17907/03 and Civil Application No.2089/04. In view of this, we are of the clear opinion that no second LPA against the same order would be maintainable before this Court.

6. Even assuming for the sake of arguments that the previous Appeal, i.e. LPA No.1128 of 2004 was dismissed as withdrawn at the admission stage, therefore, the 2nd LPA was maintainable, then also this Court cannot entertain this second LPA as there is no change in the circumstances. It is clear from the earlier order dated 5.5.2004 passed by another Division Bench of this Court in LPA 1128 of 2004 that the Division Bench of this Court was not inclined to entertain the LPA on the ground that

the learned Single Judge while rejecting the Special Civil Application made it clear in Her Lordship's order that she would not exercise the jurisdiction under Article 227 of the Constitution. In that view of the matter obviously this second LPA against the said order of learned Single Judge would not be maintainable. It was argued by the learned Counsel Shri Mehta for the petitioner that after withdrawing his first LPA he had approached the learned Single Judge by filing MCA No.901 of 2004 seeking clarification from Her Lordship that she had exercised her jurisdiction under Article 226 of the Constitution and not under Article 227. It is true that after withdrawing the first LPA the present Appellant had approached the learned Single Judge by way of Misc. Civil application No.901 of 2004 and that the learned Single Judge has also entertained the said M.C.A. But, merely because the Miscellaneous Civil Application is entertained by the learned Single Judge it would not be a ground for the appellant to once again file LPA and plead that his Appeal should be entertained by this Court as having become maintainable. If the learned Single Judge, ultimately decide the Misc. Civil Application No.901 of 2004, filed by the appellant, in favour of the appellant, then there would be different consideration and if the Misc. Civil Application is rejected then the matter comes to an end.

7. At this stage a request was made by learned Counsel Shri Tushar Mehta to direct the learned Single Judge to dispose of the aforesaid MCA No.901 of 2004 at the earliest. Instead of issuing any such direction to the learned Single Judge, we are of the considered opinion that the appellant should first approach the learned Single Judge by way of proper Application for expeditious hearing of Misc. Civil Application No.901 of 2004. We are sure, as and when such Application is moved before the learned Single Judge then, looking to the backlog of the cases pending before Her Lordship, Her Lordship would try to consider the Application for expeditious hearing of Misc. Civil Application No.901 of 2004 and pass appropriate order on it.

8. With the above observations this Appeal is dismissed as not maintainable.

At this stage the request is made to continue the Ad.interim relief granted in favour of the appellant. The request is rejected as this Court has come to the conclusion that the present LPA is not maintainable.

Civil Application No.4452 of 2004 is dismissed as

the main LPA is dismissed as not maintainable. Ad.interim relief granted earlier on this Application is vacated. No order as to costs.

(B.J.Shethna, J.)

Date : July 19, 2004

(M. C. Patel, J.)

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